**THE HIGH OF UTTARANCHAL AT NAINIAL**

**Writ Petition No.630 of 2006**

Rajendra Kumar William S/O Sh. R.S. William, Administrative Co-ordinator, Area Development Programme Jagriti, 287/1, Vasant Vihar, Dehradun. ……**Petitioner.**

***Vs.***

1. Presiding Officer, Labour Court Dehradun.
2. Mrs. Shirley Upadhyay W/O Mr. Sunil Upadhyay, R/O Gram Bhuddi, P.O. Karbari, Dehradun.

…. **Respondents.**

**Ms. Sanjana Madan, learned counsel for the petitioner.**
**Sri Nand Prasad, learned Standing Counsel for the State-respondent no.1.**

**Dated May 25, 2006**
**P.C.: Hon'ble B.S. Verma, J.**

By means of this writ petition, the petitioner has sought issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 1-5-2006 and 19-10-2005 passed by the respondent no.1. It was further prayed that the respondent no.1 be directed to take the evidence of the petitioner on record.

Relevant facts of the case are that the dispute whether the termination of services of Smt. Shirley Upadhyay w.e.f. 20-4-2004 by the employers was legal and proper, if not, whether the workman is entitle to any relief and its details was referred to the respondent no.1 for adjudication. The reference was registered as Dispute No. 15 of 2002, Shirley Upadhyay Vs. Manager A.D.P. Jagriti.

The workman-respondent no.2 has stated that she was employed under the employment of opposite party as Community Development Organizer on 17-02-1997 on contractual basis at the rate of Rs. 4,189/- as monthly wages. Her services were terminated on 20-04-2001 without any prior notice. It was alleged that the provisions of Section 6(n) of the Industrial Disputes Act, 1947 were not complied with by the employer and that the termination of service of the workman petitioner was against the principles of

natural justice. The respondent no.2 has prayed for her reinstatement in the service with full wages. The employer filed its written statement resisting the case mainly on the ground that the case does not within the ambit of Industrial Disputes Act, therefore, the case is liable to be dismissed.

The record reveals that during the course of hearing of the case before the Labour Court, case was fixed for 19-10-2005 for the evidence of the employer, but neither the employer nor its authorized representative was present before the court, therefore, the right to adduce evidence was taken away and the case was ordered to proceed ex-parte fixing 16-1-2006 for argument. On that date, the workman alone put in appearance before the court and the employer was neither present nor represented. The case was adjourned to 22-3-2006. On that date, the petitioner moved application 19-D for setting aside the ex-parte order passed against the employer. The workman objected to the application asserting that the application has been moved on baseless ground. It was further contended that the employer has not shown any reason for his non-appearance and no affidavit was filed in support of the application. After hearing both the parties, the learned Labour Court came to the conclusion that the employer could not make out sufficient cause for non-appearance on the consecutive two dates fixed and Ultimately the application was rejected on the ground that the application moved by the employer (19-D) was barred by limitation and the same was also not supported by any affidavit. Aggrieved, the present writ petition has been preferred by the employer.

I have heard leaned counsel for the petitioner and perused the entire material on record.

In the course of argument, the learned counsel for the petitioner urged that non-appearance of the employer before the Labour Court on the two dates was not deliberate and the default

occurred due to the mistake of the *Munshi* of the counsel engaged by the employer. The learned counsel for the petitioner has fairly stated at the bar that one last opportunity be afforded to the petitioner to lead the evidence of the employer before the Labour Court enabling the court to decide the dispute on merits and the learned counsel has undertaken that no further adjournment shall be sought by the petitioner to lead the evidence in the case before the court below.

Admittedly, the date fixed in the case before the Labour Court was 19-10-2005 and the employ was not represented on that date. Even on the adjourned date, i.e. on 16-1-2006, the position was the same. It is true that the application 19-D was moved only on 22-3-2006. However, it appears from the material on record that even till 1-5-2006 no further proceedings were drawn by the learned Labour Court, through it was open to the court below to have concluded the arguments ex-parte in the case. It appears that the case was simply adjourned on the two dates when the employer was absent. It is settled law that the power to condone the delay is discretionary. In the facts and circumstances of the case, to meet the ends of justice, and taking into consideration the statement of the learned counsel that no further adjournment shall be sought for adducing the evidence in the case before the learned Labour Court, it will be in the fitness of things that the dispute be decided on merits by affording one last opportunity in this regard. The writ petition deserves to be allowed.

The writ petition is allowed. Accordingly, the impugned orders passed ex-parte by the respondent no. 1 dated 19-10-2005 and 1-05-2006 are hereby set aside. The petitioner is given last opportunity to adduce evidence before the learned Labour Court on the date to be fixed by it in the case. Both the parties shall co-operate in the expeditious disposal of the case on merit. Costs easy.

**(B.S. Verma, J.)**